took for collection,[14] are neither convincing nor satisfactory. The usual transaction starts and finishes with the local office, whether the customer is observant and knows there is a main office somewhere else, or whether he is unobservant and fails to appreciate that fact. Although arbitrary or mechanical rules of reasonableness are undesirable in such cases,[15] the result reached in the principal case seems sound. In the absence of strong evidence to warrant another conclusion, when an office, whether known as a branch or not, is vested with general selling authority and has the apparent power to make collections, it may be expected by persons dealing with it to have proper collecting facilities which will be utilized for the expeditious presentation of paper drawn in its sales territory. Before regarding the rule as soundly established, however, the actual business purpose of the "send-checks-to-headquarters" practice should be considered. Such legal questions cannot be answered satisfactorily without a consideration of the business reasons underlying the practice. It is a device to prevent losses from the juggling of large local sales revenues by dishonest local sales managers.[16] But while thus preventing one loss, it makes possible another when bank failures occur. Perhaps bank failures are less common, however, than sales managers who play the races, the wheat pit, or the stock market. A possible solution is to place the responsibility upon the bank carrying the local sales deposits by limiting the checking privileges of the local sales manager. Between the drawer and the selling house, any risk incident to protecting the latter from the possible crime of its agent belongs to the party protected.

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RENVOI IN DIVORCE PROCEEDINGS BASED UPON CONSTRUCTIVE SERVICE

That the "renvoi doctrine" furnishes no proper basis for the solution of the problems in the conflict of laws in general admits of little doubt.[1] As the term is generally understood, it means that when a

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[14] Whether this information was thought to have been gained from an examination of the endorsements on his cancelled checks previously paid to the same company does not appear. The principal case correctly declares that there is no duty on the part of a drawer of checks to make such an examination.

[15] Many cases, including the principal case, take the precaution to state that they are decided on all the facts. Note the language of the trial Judge quoted in the *Newark Case, supra* note 6.

[16] See *First Nat. Bank of Phila. v. Farrell* (1921, W. D. Pa.) 272 Fed. 371.

[1] Pollock, *The Renvoi in New York* (1920) 36 L. QUART. REV. 92; Baty, *Polarized Law* (1914) 117; Lorenzen, *The Renvoi Theory and the Application of Foreign Law* (1910) 10 COL. L. REV. 190, 327; *The Renvoi Doctrine in the Conflict of Laws* (1918) 27 YALE LAW JOURNAL, 509.

court is to apply the law of some other state or country, it must consult not only the particular provisions relating to the matter in issue, but also the rules of the conflict of laws governing in that state or country. For example, if the question relates to the distribution of personal property upon death, the acceptance of the "renvoi doctrine" signifies that the property will not necessarily be distributed according to the statute of distributions of the state or country in which the decedent was domiciled at the time of his death, for if his domicil was in a state or country in which the rule of the *lex patriae* has been substituted for that of the *lex domicilii,* the rights of the parties would be determined by the statute of distributions of the decedent's national law. Again, if the law of the forum provides that capacity to enter into a commercial contract shall be controlled by the law of the place of contracting and the conflict of laws of the *lex loci* should prescribe the *lex domicilii* or the *lex patriae,* the validity of the contract would be governed by the local rules relating to capacity existing in the state in which the party in question had his domicil or to which he belonged by nationality. If the law of the forum says that the validity of a contract, apart from capacity and formalities, is to be subject to the law of the place of performance and the rule of the conflict of laws of the state or country in which the performance is to take place says that the law of the place of contracting controls, the validity or invalidity of the contract would depend upon the law of contracts of the place where the contract was entered into.

Illustrations of the same problem could easily be multiplied in view of the fact that the rules of the conflict of laws of the various countries differ as regards most questions that may arise in this branch of the law. It must suffice here to call attention to the fact that the "renvoi doctrine" effects in every instance a substitution of the foreign rule of the conflict of laws for that prescribed in the first place by the law of the forum.[2] A mere statement of the operation of the "renvoi doctrine" should be sufficient to condemn it. The policy which guides our courts when they apply the law of domicil, the law of the contract, or any other rule of the conflict of laws, must manifestly be determined by our own law and cannot reasonably be left to the judgment of a foreign legislator.[3] This has also been the conclusion of the only decision, by an English or American court, in which the problem of *renvoi* was clearly presented.[4] It would be well for the future develop-

[2] "For a court to hold that the legislature meant that the French conflict of laws rule is to apply and New York internal law to be enforced is to abrogate this provision of the statute, or to amend it by substituting therefor the French rule, namely, that the law of the nationality is to govern." *In re Tallmadge* (1919) 62 N. Y. L. JOUR. 216; COMMENTS (1919) 29 YALE LAW JOURNAL, 214.

[3] Baty, *op. cit.* 117; Lorenzen, *op. cit.* 27 YALE LAW JOURNAL, 509, 519-520.

[4] *In re Tallmadge, supra* note 2; COMMENTS (1919) 29 YALE LAW JOURNAL,

ment of our rules of the conflict of laws if every court in this country would subscribe to the following words, pronounced by the learned Referee in the case referred to:[5]

"On account of its inconsistency with common-law theories of the conflict of laws, its fundamental unsoundness and the chaos which would result from its application to the conflicts arising between the laws of the states of this country it is my opinion that the 'renvoi' has no place in our jurisprudence."

Of course it does not follow that some exceptions may not have to be recognized to the fundamental doctrine that the rules of the conflict of laws call for the application of the foreign *local* law, to the exclusion of its rules of the conflict of laws. In some instances a desirable result may be attained by referring to the foreign law inclusive of its rules of the conflict of laws. A clear case is presented, for example, in the matter of the execution of a deed. Suppose that a deed is executed and acknowledged in the style customary at the place of execution, that it does not satisfy the formal requirements for deeds executed in the state in which the property is situated, but that the law of the latter state authorizes deeds to be executed in the mode prescribed by the law of the place of execution. Such a deed must certainly be regarded as valid everywhere, even apart from constitutional requirements, and yet this cannot be done without giving effect to a rule of the conflict of laws of the situs.[6]

A recent case, *Ball v. Cross* (1921) 231 N. Y. 329, 132 N. E. 106, decided by the Court of Appeals of New York, has raised the question whether the "renvoi doctrine" should be recognized, by way of exception, with regard to divorce also. Suppose that A and B are domiciled in the State of X, that A leaves his wife and procures a divorce from B in the state of Y upon constructive service, and that B thereafter marries, in the state of Z, a citizen of New York, C. Can C have the marriage annulled in New York on the ground that B was never properly divorced from her first husband? Let us assume for the pur-

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214. The *renvoi* doctrine was argued also before Mr. Justice Farwell in the case of *In re Johnson* [1903] 1 Ch. 821, but it was not squarely presented, as it was to no one's interest to contend that the local law of Baden should govern as the *lex domicilii*, and it is not possible to say, therefore, what conclusion Mr. Justice Farwell would otherwise have arrived at. See NOTES (1903) 19 L. QUART. REV. 245; Pollock, *op. cit.* 36 L. QUART. REV. 92.

[5] *In re Tallmadge, supra* note 2.

[6] The rule of the situs that a deed may be executed in the form prescribed by the local law of the place of execution is clearly a rule of the conflict of laws, for it gives only a general reference to the law of another state and does not prescribe the exact mode of execution. If it had provided that all deeds relating to domestic land executed without the state must satisfy a certain definite form prescribed by it the provision would have been an internal one and not a rule of the conflict of laws.

pose of our discussion that the New York courts have jurisdiction to annul the marriage.[7] Will the New York courts recognize that the divorce decree of the State of Y was operative in New York with respect to B? If B had been a citizen of New York at the time of the divorce proceedings, the established policy of New York, based upon a desire "to promote the permanency of marriage contracts and the morality of the citizens of the state,"[8] would have been opposed to the recognition of the decree.[9] What attitude should be taken, however, where B was, at the time of the divorce, a citizen of another state? Two ways were open before the court. It could say that the policy of New York with reference to the non-recognition of a divorce upon constructive service, pronounced by a court other than that of the matrimonial domicil,[10] was limited to New York citizens and that such a decree would be recognized with respect to citizens of another state. In so doing effect might be given to the foreign decree of divorce when it would have none in the state in which the party was domiciled. Or it could hold, as it did in the instant case, that the validity or invalidity of the decree with reference to B should be left to the determination of the state of which B was a citizen at the time of the divorce proceedings. The latter course involves an acceptance of *renvoi,* for it adopts the policy of the *lex domicilii et patriae* in the matter of the conflict of laws as regards the recognition or non-recognition of a foreign decree of divorce based upon constructive service.

The advantage of the position taken by the New York Court of Appeals is that if all courts follow its example, foreign decrees of divorce rendered upon constructive service would have, with respect to the party so served, the same effect in all jurisdictions, a result which in the actual state of the law cannot be attained if the law of the forum decides its own policy without regard to the policy of the state of which the party in question was a citizen. The recognition of *renvoi* in this class of cases may bring with it, however, considerable inconvenience where the parties are foreigners. If the national law of the party served constructively is to determine the validity of the divorce with respect to such party, our courts will frequently be called upon to apply the rules of the conflict of laws applicable to foreign divorce proceedings obtaining in foreign countries, a task beset with no little difficulty.[11] The embarrassment so caused may be reduced, however, to

[7] See Goodrich, *Jurisdiction to Annul a Marriage* (1919) 32 HARV. L. REV. 806.

[8] *Hubbard v. Hubbard* (1920) 228 N. Y. 81, 126 N. E. 919.

[9] *People v. Baker* (1879) 76 N. Y. 78; *Olmsted v. Olmsted* (1908) 190 N. Y. 458, 83 N. E. 569.

[10] A decree pronounced upon constructive service by the courts of the matrimonial domicil must be recognized by all other courts under the "full faith and credit" clause of the Federal Constitution. *Atherton v. Atherton* (1901) 181 U. S. 155, 21 Sup. Ct. 544; *Thompson v. Thompson* (1913) 226 U. S. 551, 33 Sup. Ct. 129.

[11] For the rules of the conflict of laws governing the recognition of foreign

a considerable extent, if the criterion of domicil is substituted for that of nationality in this class of cases, as well it might be, for the policy of a state in the matter of divorce extends equally to all persons domiciled within the state, irrespective of citizenship. As the number of cases in our courts in which the defendant in a divorce proceeding is domiciled in a foreign country must be relatively few, the inconvenience that may arise from the application of the law of the domicil, inclusive of its rules of the conflict of laws, would appear to be negligible.

E. G. L.

TITLE BY INNOCENT MISTAKEN OCCUPATION

If a man occupies land to a certain boundary, mistakenly thinking that all the land is his when in fact part of it is an extension beyond his true line, and if he so occupies the extension for more than the period prescribed in the statute of limitations, does he gain title thereto by adverse possession? There is some real and much apparent conflict in the answer to this question by American state courts.

Take a case of such occupation arising from pure, unsuspected mistake, unaccompanied by any doubt in the occupier's mind that the boundary to which he occupies is in fact the true boundary.[1] It is evident that in such circumstances the intention and claim of the possessor to the strip of land beyond the true boundary are precisely those with respect to all the rest of the land, which is truly his. This conclusion as to the nature of his intent and claim follows from the fact that he is holding to the boundary as the result of unsuspected mistake. For how can it be said that one who is occupying land under the impression that it is his own occupies it with a frame of mind different from that of an owner? If an owner's possession of his own land is hostile to all the world, in the sense that it is unaccompanied by any recognition of right in others,[2] it surely follows that the possession of a man who

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divorce in France, Germany, and Italy, see Lorenzen, *Cases on the Conflict of Laws* (1909) 564, 565.

[1] *Hopkins v. Duggar* (1920) 204 Ala. 626, 87 So. 103.

[2] In Tiffany, *Real Property* (1920 ed.) the author identifies hostility of possession with claim of title. He says at p. 1936: "It has been asserted, by perhaps most of the courts in this country, that, in order that the statute of limitations may run in favor of one in possession of land, the possession must be under claim of right or title. There would seem reason to doubt, however, whether in asserting this requirement, the courts ordinarily have in mind anything more than a restatement of the requirement of hostility of possession." As to what constitutes hostility, the same author says, at p. 1931, that a possession is hostile to a true owner, "when it is unaccompanied by any recognition, expressed or inferable from circumstances, of the right in the latter. It does not involve the necessity of an express denial of the title of the true owner, and, it is evident, in the majority of cases there is no such denial."